

January 4, 2006

Lance H. Olson
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Sacramento, CA 95814-4602

**Re: Your Request for Informal Assistance
Our File No. I-05-239**

Dear Mr. Olson:

This letter is in response to your request for informal assistance regarding the campaign reporting provisions of the Political Reform Act (the "Act")¹ as it applies to labor organizations and membership organizations you represent. As your request seeks general guidance, we are treating your request as one for informal assistance.² The assistance provided in this letter is solely based on the facts provided to us in your request. Our assistance is therefore only applicable to the extent that the facts provided to us in your request are correct, and all of the material facts have been provided. The Commission does not act as a finder of fact when issuing advice or informal assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

If a membership organization uses its sponsored committee to pay a vendor for a communication with the organization's members, and in connection with that communication the vendor makes payments to secondary vendors of \$500 or more during a reporting period, is the committee required to report the secondary vendors as sub-vendors on its campaign statements?

CONCLUSION

Yes. The committee is required to report the secondary vendors receiving payments totaling \$500 or more during a reporting period as sub-vendors on its campaign statements.

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Reg. 18329, subd. (c), enclosed.)

FACTS

Your office represents many labor organizations and other membership organizations. During an election cycle, many of these organizations, through their sponsored political action committees, spend funds for communications with organization members and their immediate families. The communications may be in the form of telephone calls or direct mail. For example, an organization, through its sponsored committee, may pay a vendor such as a consultant, a graphic designer, or a mail house to produce and distribute a member communication mailer supporting or opposing a candidate or ballot measure. In turn, the vendor may pay the post office, a printer, or a delivery service on behalf of the committee for its part in the production or distribution of the mailer. This raises the question whether such secondary vendors, assuming they are paid \$500 or more during a reporting period, must be reported as sub-vendors on Schedule G of the committee's campaign statements (FPPC Form 460).

ANALYSIS

One of the fundamental purposes of the Act, as stated in section 81002, subdivision (a), is that "receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that voters may be fully informed and improper practices may be inhibited." In furtherance of that purpose, the Act requires recipient committees, as defined in section 82013, subdivision (a), to file periodic campaign statements (§84200) disclosing information about their expenditures. (§ 84211.)

The term "expenditure" is broadly defined in section 82025 as "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes." The meaning of the term "expenditure" is further amplified in regulation 18225, which states in part:

"(a) An expenditure is any monetary or nonmonetary payment made for political purposes. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. . . ."

Under subdivision (a)(2)(D) of regulation 18225, a payment is also made for political purposes if it is made by an organization formed or existing primarily for political purposes as defined in regulation 18225, subdivision (a)(1), including a political action committee established by any membership organization, labor union, or corporation.

A sponsored committee of a membership organization is therefore generally required to disclose information about the payments that it makes for communications with members of its sponsoring organization regarding candidates and ballot measures, just as it is required to report other expenditures, unless an exemption from that disclosure requirement applies.

There is, of course, a special provision covering the disclosure of payments for membership communications that is set forth in section 85312 of the Act, brought into existence with the passage of Proposition 34. Section 85312, provides in part:

“For purposes of this title, payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements.”

Section 85312 thus generally exempts from disclosure payments made by a membership organization to communicate with its members regarding candidates and ballot measures. Moreover, regulation 18531.7, in interpreting section 85312, provides at subdivision (a) that “payments for communications to members” includes both payments by the organization itself and payments by its sponsored committee for member communications.

Commission consideration of regulation 18531.7 at several Commission meetings included ample discussion regarding the implications of section 85312 to ordinary reporting by recipient committees.³ Ultimately, the Commission approved subdivision (f) of regulation 18531.7, which expressly provides that if a payment is made by a recipient committee, which is already subject to the campaign reporting requirements of Chapter 4 of the Act, “the payment is reportable in accordance with the requirements of Government Code section 84211, subdivisions (b), (i), (j) and (k)(1),(2),(3),(4), and (6).”⁴ As noted in the *Zakson Advice Letter*, No. A-01-195:

“The Commission’s rationale for their support of this approach was based on the reporting provisions of Chapter 4 of the Act (“Campaign Disclosure”), requiring a committee to report all payments which it makes and receives. (See Memorandum to the Commission, “Payments for ‘Member Communications,’” March 7, 2002; Sections 84200-84204, 84211; *Karnette Advice Letter*, No. I-87-192.) Specifically, section 84211(e) requires committees

³ The Commission held interested persons’ meetings on member communications in May, August and December of 2001. The Commission considered regulation 18531.7 at its January 2002, March 2002, August 2002, and October 2002 meetings.

⁴ The regulation does not require reporting under subdivision (k)(5) of section 84211.

to disclose the balance of cash held at the beginning and the end of each campaign reporting period.^[5]”

However, that letter indicated that unless further specified by the Commission, the requirements of section 84211, subdivisions (k)(1)-(5), would apply. The Commission approved subdivision (f) excluding a reference to subdivision (k)(5), but including subdivisions (k)(1)(2)(3)(4) and (6).⁶ As also indicated in a staff memorandum of July 26, 2002 (*Proposition 34 Regulations: Adoption of Proposed Regulation 18531.7*), adoption of this subdivision meant that reporting by committees would remain the same as pre-Proposition 34.

Based on the information contained in your letter requesting advice, it appears that the membership organizations whose reporting duties you are inquiring about qualify as recipient committees through their collection of contributions totaling \$1,000 or more in a calendar year from their members. The organizations then direct the contributions they collect to their sponsored committees which spend the contributions for political purposes. The organizations and their sponsored committees are thereby subject to the campaign reporting requirements of Chapter 4 of the Act, which they satisfy, as provided by regulation 18419, subdivision (c), through the sponsored committees filing campaign statements on behalf of themselves and their sponsoring organizations. As such, the sponsoring organizations and their sponsored committees are covered by regulation 18531.7, subdivision (f), and so must report as expenditures the committees’ payments for member communications in accordance with the requirements of section 84211, subdivisions (b), (i), (j) and (k)(1),(2),(3),(4), and (6).

To determine what payments are required to be reported in accordance with regulation 18531.7(f), we then look to section 84303 of the Act to find the reporting duties of the sponsored committees with respect to the payments that vendors make on behalf of these committees to secondary vendors for the purpose of making the communications. Section 84303 specifically provides:

“No expenditure of five hundred dollars (\$500) or more shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee.”

⁵ The current Form 460 approved by the Commission is structured so that every dollar received and spent is disclosed on one of the form schedules consistent with the requirements of the Act.

⁶ Your letter to the Commission dated August 22, 2002, stated, “In addition, section (f) is amended to make clear that payments made by a sponsored committee for member communications are reported on campaign statements as member communications and not as contributions and independent expenditures.” Your proposed amendments specified that reporting would not be made in accordance with all of subdivision (k) of section 84211, but in accordance with subdivisions (k)(1),(2),(3),(4), and (6). The Commission approved that language, as opposed to the staff proposal to require reporting as specified in subdivision (k) in its entirety.

The sponsored committees are therefore required to report the secondary vendors receiving payments totaling \$500 or more during a reporting period as sub-vendors on their campaign statements in order to ensure adequate and complete reporting, as provided in section 84211⁷ and as set forth in subdivision (f) of regulation 18531.7.

Should you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

Enclosure
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⁷ Subdivision 84211(k)(6) also requires sub-vendor reporting.